IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 120 of 2005

Between:

Girish Chandra Mishra S/o Sri Kishan Lal Mishra, L/NK Army No. 10405329Y presently working at 762DSC Platoon RCI, Vgyanakancha, Hyderabad, R/o Quarter No. Type B-22/4, RCI Quarters, Vigyanakancha, Hyderabad

..... PETITIONER

AND

The Central Government Defense Service (Ministry of Defence), rep. by

1 The OCDSC Company,
RCI Vigyanakancha, Hyderabad
2 The Sub Maj. DsC. Company, RCI, Vigyanakancha, Hyderabad
3 The Platoon Commander 762 DSC Platoon RCI, Vigyanakancha, Hyderabad
4 The Dy. Director General DSC, ARmy Head Quarters, West Block-08, R.K. Puram, New Delhi
5 The Chief Record Officer, for Officer Inchare, DSC Records Cannanur, Kerala State.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ or order or direction in the nature of Writ of Certiorari and to set a side the Movement order in Case file RCI/P1-762/Mov/489/DSC dt 31-12-2004 issued by the 1st respondent i.e. LT. Col. Oc, DSC RCI for Director and Consequential posting order authority DSC Records Letter No. CA-3/1779/C-754 dt 10-12-04 issued by the 5th Respondent by calling for the records and which is illegal arbitrary and consequently direct the Respondents to retain the petitioner at Hyderabad till the completion of term of three years of the service at one place.

Counsel for the Petitioner:MR.CAPT.K.M.SAXENA

Counsel for the Respondents: MR. A. RAJASHEKAR REDDY (SC FOR CG)

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 120 of 2005

O R D E R:

The present writ petition is filed to call for the records in RCA/P1-762/Mov/489/DSC dated 31.12.2004 issued by the 1st respondent and the consequential posting order in Letter No.CA-3/1779/C-754 dated 10.12.2004 issued by the 5th respondent as illegal and arbitrary.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was re-enrolled in Defence Corps on 5.7.1996 at BRP Meerut and thereafter he has completed training in Kerala in the year 1996. From 1996 to 1998 he served in a DSC Platoon and thereafter during 1998-2001 he was posted at Ordinance Factory, Itarsi. During 2001-2003 he was posted at 535 DSC Platoon and thereafter from 6.4.2004 to 7.3.2004 he was attached to DLRL, Hyderabad. Later he was posted as DMRL, Hyderabad from 8.3.2004 to 24.6.2004. Later he was posted to Hyderabad at 762 DSC Platoon on 25.6.2004. According to him within a span of 20 months he was shifted in three different places at

Hyderabad and without completion of three years term at one place the authorities have transferred him. According to the petitioner, an employee is liable to be retained at one particular place for three years and the posting order from Hyderabad to 34 DSC Platoon at High Hill (Silchar) Assam State is nothing but with a mala fide intention of respondents 1 to 3. On 7.1.2005 he went to M.I. Room, RCI, reported sick and the doctor advised him to take rest for a period of 48 hours and his case was referred to Physician, Military Hospital, Secunderabad. Apart from that, his wife and daughter are not keeping good health and they are taking treatment at Hyderabad since more than a year. According to him, he is ready to go anywhere but after completion of stipulated period of three years. Hence the present writ petition.

Respondents 1 to 5 filed counter affidavit stating that defence security corps 9DSC) is a security force of the regular Army which is responsible for providing security cover to Defence installations. On receipt of joining instruction from his new unit vide letter dated 23.12.2004, the petitioner was called in OC office to give the movement order and all other connected documents on 31.12.2004 but he refused to accept the same. Having refused to accept the said posting orders the petitioner indulged in leveling false allegations against respondent No.1 with Director RCI, Hyderabad, lodged false complaint dated 24.1.2004 with SHO, Pahadishareef, Hyderabad and lodged malicious and false complaint with Cdr Andhra Sub Area, Secunderabad. It is stated that the allegation of the petitioner that he was posted to three different placed at Hyderabad is incorrect because all the three units are in the same place under one parent organization. It is not necessary to retain one particular person

for three years as it is only a policy decision and he can be posted at any time with the approval of DDG DSC at Army Headquarters. Therefore, there are no grounds to interfere with the impugned proceedings.

A reply affidavit has been filed by the petitioner on 8.2.2005 denying the allegations in the counter affidavit. The respondents also filed an additional counter affidavit stating that premature posting before completion of tenure or minimum tenure could be ordered to adjust surplus and deficiency consequent upon promotion, discharge and increase or decrease in authorized establishment to provide personnel for new raising, to provide administrative and Q cover to platoon etc. and the transfer was ordered in the exigencies of service requirements and not out of any malice.

Learned counsel for the petitioner contended that the posting/transfer is premature that the transfer order does not contain reasons; that no movement order has been served nor given; that the petitioner as well as his wife and daughter have been taking treatment since long time and unless he is fit for discharging his duties he cannot be sent to a long place; that the transfer order has been issued at the behest of the 1st respondent and the petitioner has right to serve at the present unit for a period of three years and therefore the impugned order suffers from serious legal infirmities.

On the other hand, learned standing counsel appearing for the respondents contended that the petitioner was already relieved from the present post; that it is not an isolated transfer so as

to victimize the petitioner and he is one among the three persons; that no specific mala fides have been attributed to the respondents and therefore the order under challenge does not suffer from any legal infirmities so as to call for interference by this court.

There cannot be any dispute that transfer is not only an incidence of service but also one of the service conditions. An employee is liable to be transferred anywhere. Unless the transfer order is actuated with malice or it is by way of punishment or the transfer is contrary to any of the provisions governing the service conditions of the employee, normally this court will not interfere with the transfers made on administrative grounds. A copy of the extract of the transfer policy has been filed into court. Though the learned counsel for the petitioner contended that it does not contain any seal of the office who issued this policy, but he has not produced any other copy of the transfer policy. A perusal of this transfer policy goes to show that premature posting before completion of tenure/minimum tenure will only be ordered in the following circumstances:

a. Adjustment of surplus and deficiency consequent upon promotion, discharge and increase/decrease in authorized establishment;

b. To provide personnel for new raising.

c. To provide Adm and ‘Q’ cover to Platoon;

d. On medical grounds, depending upon employability restrictions imposed by medical

authorities;

e. Under any other special circumstances as approved by DDG DSC".

It is also made clear that normally no posting before completion of minimum period of two years will be issued.

As seen from the impugned proceedings it is clear that it was issued to comply with the directions of the Army Headquarters. Therefore, the above policy would clearly indicate that under special circumstances as approved by DDG DSC a person can be transferred. In this case admittedly the approval of army headquarters for giving posting orders was taken. No mala fides are attributed against the person who issued the posting order dated 10.12.2004. There is no choice left to the petitioner but to comply with the directions of the army headquarters. The order has to be carried out on priority and also forthwith. Therefore, it cannot be said that the order under challenge was issued contrary to the rules or policy of transfers governing the service conditions of the petitioner.

With regard to malice, a vague allegation has been made in the writ petition stating "the said posting is nothing but with mala fide intention of respondents 1 to 3". In the reply affidavit filed by the petitioner it is stated as follows:

"all these averment of the respondents herein only go on to establish one fact that the transfer order of the petitioner was arranged over phone as a punishment for petitioner's action or raising certain points at Darbar (monthly general meetings of the troops

where the Commanding Officer listens to the problems of the troops and offers on the spot solutions) which were unpalatable to the officers in the higher echelons".

In the additional affidavit filed by the petitioner it is alleged that the action in violation of Army headquarters' policy has been actuated by malice and prejudice of the officers who have been arrayed as respondents 1 to 3. It is also alleged that at the request and insistence of the 1st respondent the 4th respondent sent a fax message to the 5th respondent throw the petitioner to some forsaken place and therefore the transfer order is vitiated by mala fides in prejudicial manner at the best of the 1st respondent.

Respondents 1 to 3 are not the authorities to transfer the petitioner. In pursuance or the orders dated 10.12.2004 issued by the officiating Chief Recording Officer for OAC records the transfer order has been carried out by respondents 1 to 3. Since no allegations or mala fides are attributed against the person who ordered the transfer, the same cannot be taken as a ground. The petitioner is not a person who has been singled out in making transfers and he is one among the three persons who have been transferred. Therefore, in the absence of any allegations of mala fides on the part of 5th respondent who effected the transfer, the same cannot be challenged.

The last ground on which the transfer is sought to be interfered with is that it was made by way of punishment. On this ground it is stated in the additional affidavit filed by the petitioner that

the transfer order of the petitioner was arranged over phone as a punishment for petitioner's actions or raising certain points in Darbar. It is a very vague allegation against the respondents. So, under no stretch of imagination it can be said that the transfer of the petitioner is by way of punishment. There cannot be any dispute that the defence security corps is a security force of the regular Army which is responsible for providing security cover to Defence installations of three services, namely, Army, Air Force and Navy and Ministry of Defence civil establishments such as DRDO and Ordinance Factory. The petitioner is bound to serve in a place wherever he is required in exigencies. Since a decision has been taken by the Headquarters, the transfer order need not contain any reasons. From the transfer policy of the respondents it is discernible that premature posting before completion of tenure or maximum tenure could be ordered to adjust surplus and deficiency consequent upon promotion, discharge and increase/decrease in authorized establishment, to provide personnel for new raising and to provide Adm and 'Q' cover to Platoon. Therefore, in my considered opinion the order under challenge does not suffer from any incurable legal infirmities as the transfer was effected by the Army Headquarters and the same is not shown to be contrary to the transfer policy.

It is also contended that the petitioner was not fit to join duties and that no movement order has been served and that some of his family members are taking medical treatment in Hyderabad and that it will cause inconvenience to the petitioner.

With regard to serving of movement order, the respondents contended that in spite of serving movement order the

petitioner refused to receive the same and therefore he was relieved. With regard to taking treatment of the petitioner, the record filed by him would go to show that he was suffering from hyper tension and that cannot be said to be a reason for the petitioner to be unfit for discharging his duties. With regard to treatment, it can be available at the transferee place also. With regard to the school education of the daughter of the petitioner, that cannot be a ground for interfering with the transfer order because some schools are located in the cantonment area of Masimpur. The facilities available have been incorporated in the letter dated 23.12.2004 captioned as 'Welcome Letter'.

Therefore, I am of the considered opinion that the transfer/movement order does not vitiate from any incurable legal infirmities so as to call for interference of this court. The writ petition is totally devoid of merit and therefore it is dismissed.

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K.C. Bhanu, J.

Date: --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

The Central Government Defence Service (Ministry of Defence)

1 The OCDSC Company,
RCI Vigyanakancha, Hyderabad
2 The Sub Maj. DsC. Company, RCI, Vigyanakancha, Hyderabad
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